



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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November 30, 2022

The Honorable Debbie Stabenow
Chairwoman
U.S. Senate Committee on Agriculture,
Nutrition, and Forestry
328A Russell Senate Office Building
Washington, D.C. 20510

The Honorable John Boozman
Ranking Member
U.S. Senate Committee on Agriculture,
Nutrition, and Forestry
328A Russell Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Chairman
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Toomey
Ranking Member
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Re: NASAA Calls on Congress to Learn the Right Lessons from the FTX Bankruptcy

Dear Chairwoman Stabenow, Chairman Brown, and Ranking Members Boozman and Toomey:

On behalf of the North American Securities Administrators Association (“NASAA”),¹ I write in support of efforts underway to uncover the facts that led to the bankruptcy of FTX Trading Ltd. and its affiliates (“FTX”).² Your oversight and investigatory efforts will help inform the ongoing regulatory policy discussions related to digital assets occurring at the state and federal levels of government.³ In addition, I write to urge you and your colleagues to help us learn the right lessons from the FTX bankruptcy. As explained below, high on the list of reforms should be the need to (1) maintain strong state regulatory authority, (2) strengthen the disclosures and corporate governance of large private companies, and (3) strengthen coordination among regulators.

I. Congress Should Preserve the Authority of State Securities Regulators

For over a century, state securities regulators have been on the frontlines of innovations that have made our capital markets safer, more efficient, and more inclusive. Today, we continue

¹ Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grassroots investor protection and responsible capital formation.

² See, e.g., [Letter from Chairman Raja Krishnamoorthi](#) (D-IL), U.S. House Committee on Oversight and Reform, Subcommittee on Economic and Consumer Policy, to Mr. Bankman-Fried and Mr. Ray (Nov. 18, 2022).

³ See Jeremy Hill, [Enron’s Liquidator to Oversee FTX’s Massive Crypto Bankruptcy](#), BLOOMBERG (Nov. 11, 2022).

to work hard to ensure that the latest innovations occur within the well-established regulatory framework for supporting investor protection and responsible capital formation. Among other activities, we license firms and their agents, investigate violations of the law, file enforcement actions when appropriate, and educate the public about investment fraud.

State securities regulators have a strong record of protecting and educating investors in matters involving digital assets. About a decade ago, NASAA began warning investors about scams tied to digital assets.⁴ The first state enforcement actions against a fraudulent digital asset scheme occurred soon thereafter when state regulators issued orders to stop an initial coin offering (“ICO”) by BitConnect. This work evolved into Operation Cryptosweep, which was a task force comprised of U.S. and Canadian NASAA members who produced significant enforcement results related to ICOs and other cryptocurrency-related investment products.⁵ Most recently, state regulators have been at the forefront of cases involving the unregistered offerings of securities in the form of interests in so-called crypto-lending programs like those offered by BlockFi, Celsius, and Voyager.⁶

The FTX collapse is yet another reminder of how important it is to preserve the existing authority of state securities regulators. As highlighted above, long before the FTX collapse made news around the world, state securities regulators were hard at work investigating alleged violations of the law in the digital assets space and moving quickly to protect Main Street investors. We can assure you that the extent of the harm in the digital assets space right now would be worse if only the federal government had authority to act.⁷

⁴ See NASAA, [Informed Investor Advisory: Virtual Currency](#) (Apr. 2014). For additional NASAA advisories, see, e.g., [Informed Investor Advisory: Decentralized Finance \(DeFi\) Defined](#) (Dec. 6, 2021); [Informed Investor Advisory: Protecting Your Online Accounts](#) (Sept. 16, 2021); [Informed Investor Advisory: Social Media, Online Trading and Investing](#) (Apr. 1, 2021); [Informed Investor Advisory: Initial Coin Offerings](#) (Apr. 16, 2018); [Informed Investor Advisory: Cryptocurrencies](#) (Apr. 13, 2018); [Informed Investor Advisory: The Next Big Thing](#) (Nov. 9, 2015).

⁵ See, e.g., NASAA, [Operation Cryptosweep Results as of 2018](#). Upon the indictment of the founder of BitConnect in 2022, the U.S. Department of Justice (“DOJ”) described the ICO as a “massive cryptocurrency scheme” that defrauded investors of more than \$2 billion. See DOJ, [Founder of Fraudulent Cryptocurrency Charged in \\$2 Billion BitConnect Ponzi Scheme](#) (Feb. 25, 2022).

⁶ See, e.g., [NASAA Letter to the Senate and House Agriculture Committees Regarding the DCCPA](#) (Sept. 9, 2022); [Written Testimony of NASAA President and Maryland Securities Commissioner Melanie Senter Lubin delivered to the U.S. Senate Committee on Banking, Housing, and Urban Affairs](#) (July 28, 2022); NASAA, [NASAA and SEC Announce \\$100 Million Settlement with BlockFi Lending, LLC](#) (Feb. 14, 2022).

⁷ See, e.g., Alex Nguyen, [Cryptocurrency Firm FTX, Billionaire CEO Focus of Texas Securities Investigation](#), THE TEXAS TRIBUNE (Oct. 17, 2022); Francis Yue, [‘I Just Wake Up and Cry’: Voyager and Celsius Bankruptcies Have Destroyed Some Crypto Investors’ Confidence in Centralized Platforms](#), MARKETWATCH (July 15, 2022); Maria Ponnezhath and Tom Wilson, [Major Crypto Lender Celsius Files for Bankruptcy](#), REUTERS (July 14, 2022); Cheyenne Ligon, [Texas, Other States Open Investigation Into Celsius Network Following Account Freeze](#) (June 16, 2022); [Five States File Enforcement Actions to Stop Russian Scammers Perpetrating Metaverse Investment Fraud](#) (May 11, 2022); [Sand Vegas Casino Club Located in the Metaverse Is Soliciting Investors to Invest Real Money in Un-Registered Investments](#) (Apr. 13, 2022); [New Jersey Bureau of Securities Orders Cryptocurrency Firm Celsius to Halt the Offer and Sale of Unregistered Interest-Bearing Investments](#) (Sept. 17, 2021). See also [NASAA Reveals Top Investor Threats for 2022](#) (Jan. 10, 2022); [NASAA Announces Top Investor Threats for 2021](#) (Mar. 3, 2021); [NASAA Announces Top Investor Threats for 2020](#) (Dec. 23, 2019).

II. Congress Should Restore Additional Oversight and Transparency to the Private Securities Markets

As state securities regulators, we regularly advocate for Congress to join us in our longstanding efforts to restore oversight and transparency to the private securities markets. Among other such efforts, NASAA recently endorsed S. 4857, the Private Markets Transparency and Accountability Act. This legislation would extend reporting and disclosure requirements of the U.S. Securities and Exchange Commission (“SEC”) to companies that have (i) a valuation of \$700 million (excluding shares held by insiders) or (ii) 5,000 employees and \$5 billion in revenues.

In a nutshell, we believe the FTX collapse should remind all of us of the importance of ensuring that no private company can hide fraud or other misconduct from legislators, regulators, or investors. As background, the law governing private securities offering disclosure is weak. Generally, private companies do not have to make their offering disclosures accessible to the SEC. Instead, they can submit an 8-page form notice (“Form D notice”) to the SEC and the applicable states where securities have been sold without registration under the Securities Act of 1933 in an offering based on a claim of a qualifying exemption. The notice is published in a public database called EDGAR and includes basic information regarding the securities issuer, the offering, the investors, and related fees. It also includes a disclaimer that the notice may contain inaccurate or incomplete information. As further background, the law governing periodic reporting by large private companies is also weak. Presently, Section 12(g) of the Securities Exchange Act of 1934 (“Exchange Act”) requires a company to report publicly after reaching 2,000 “holders of record.” This trigger is easily avoidable because a single broker or investment fund is counted as one recordholder, while holding securities on behalf of thousands of underlying investors.⁸

In the case of FTX, there is no doubt that stronger disclosure and corporate governance requirements in the private securities markets would have made it easier for all of us to spot or prevent the alleged fraud and other misconduct earlier. By way of illustration, under existing law, FTX Trading Ltd. submitted Form D notices to the SEC after raising over \$1.4 billion in capital from dozens of investors. Moreover, in these notices, the corporation only had to disclose basic information regarding it, the offering, the investors, and related fees.⁹ Had the law required more timely and fulsome disclosure, regulators and other market watchers may have identified the gaps and weaknesses in FTX’s corporate governance earlier.¹⁰ Another way the SEC and

⁸ See former SEC Commissioner Allison Herren Lee, [Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy](#) (Oct. 12, 2021).

⁹ On August 5, 2021, Samuel Bankman-Fried submitted a Form D to the SEC on behalf of FTX Trading Limited. The notice disclosed that the company had relied on a securities offering exemption in order to offer \$1 billion of equity in his company without first registering the securities with the SEC. The notice disclosed that seventy-seven (77) investors had already invested in the offering. [View the Form D filing on EDGAR](#). On November 2, 2021, Mr. Bankman-Fried submitted another Form D to the SEC. In this one, he notified the SEC that FTX Trading Limited had relied on a securities offering exemption in order to offer \$415,341,812 of equity in his company without first registering the securities with the SEC. The notice disclosed that eighty-five (85) investors had already invested in the offering. [View the Form D filing on EDGAR](#).

¹⁰ See generally David Yaffe-Bellany, [New Chief Calls FTX’s Corporate Control a ‘Complete Failure’](#), N.Y. TIMES (Nov. 17, 2022).

others may have detected the alleged misconduct earlier is through Exchange Act reporting. Under existing law, FTX apparently did not have to submit Exchange Act reports, such as a Form 10-K, to the SEC. If the law had required large private companies such as FTX to submit Exchange Act reports, the government and other market watchers would have had access to the corporation's financial statements and, depending on the size of the corporation, those statements would have been audited. Such reporting also would have necessitated the identification of a senior executive at FTX to serve as the primary or chief financial officer.¹¹

III. Policymakers Should Foster Better Coordination Among Regulators

We, as state securities regulators, work with the SEC and the U.S. Commodity Futures Trading Commission ("CFTC"), as well as other federal agencies and offices, on many issues and matters. Among other ways of coordinating and collaborating, we serve alongside our federal regulators on various regulatory working groups. For example, since 2010, a state securities regulator has served as a non-voting member of the Financial Stability Oversight Council ("FSOC"). To FSOC, we bring the insights of a 'first responder' who can see trends developing at the state level that may affect the larger financial system.¹²

Despite existing regulatory coordination, we believe the FTX collapse should teach us all to find new and better ways to work together to prevent investor harm before it occurs. As background, limited processes presently exist for regulators to exchange information that has been provided to them by market participants regarding the same or similar matter. Often, the other regulator learns of the development by searching the other regulator's website or reading about it in the press. Moreover, market participants generally are aware of these regulatory communication challenges. While many do not, some participants take advantage of the challenges to secure outcomes that are more favorable to them or their clients.

In addition to other solutions, Congress could improve communication among regulators by passing legislation that requires the federal government to invite state securities regulators to participate in any federal advisory council, committee, task force, or similar working group convened to examine some aspect of the U.S. securities regulatory framework. At present, state securities regulators must review all federal legislation and seek textual changes where lawmakers inadvertently excluded state regulators from a working group. For example, NASAA has asked the staff of Rep. Patrick McHenry (R-NC) to make clear that the CFTC and SEC must invite state securities regulators to participate in the digital assets working group that would be established by H.R. 1602, the Eliminate Barriers to Innovation Act of 2021.¹³

In closing, I want to commend you and your colleagues for the bipartisan steps taken in 2022 to advance policy discussions related to digital assets. Ultimately, investors and taxpayers

¹¹ See SEC, [Exchange Act Reporting and Registration](#) (last updated Apr. 28, 2022).

¹² See NASAA, [State Regulators Announce Representatives for the Financial Stability Oversight Council](#) (Sept. 23, 2010); NASAA, [Maryland Securities Commissioner Lubin To Represent NASAA on Financial Stability Oversight Council](#) (Oct. 12, 2015).

¹³ See [H.R. 1602](#), the Eliminate Barriers to Innovation Act of 2021. To date, no change has been made to the legislative text. However, NASAA has no reason to believe that the present leadership of the CFTC and SEC would exclude state securities regulators from the digital assets working group contemplated by this legislation.

benefit when we all work together in a positive and effective manner. If NASAA can be of assistance at any point in these discussions, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,

A handwritten signature in black ink that reads "Joseph Brady". The signature is written in a cursive, slightly slanted style.

Joseph Brady
Executive Director

CC: Members of the U.S. Senate Committee on Banking, Housing, and Urban Affairs
Members of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Members of the U.S. House Committee on Financial Services
Members of the U.S. House Committee on Agriculture